

AMENDED IN SENATE AUGUST 14, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1332

Introduced by Assembly Member Hagman

February 22, 2013

An act to amend Section 8880.325 of the Government Code, relating to the California State Lottery, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1332, as amended, Hagman. California State Lottery: assignment of prize payments.

The California State Lottery Act of 1984, an initiative measure, authorizes the California State Lottery and provides for its operation and administration by the California State Lottery Commission and the Director of the California State Lottery, with certain limitations. The act prohibits the assignment of the right of any person to a prize, except that the payment of any lottery prize may be assigned under specified circumstances, including as collateral to secure certain loans and for future payments to another person designated pursuant to an appropriate judicial order of a California superior court, or a federal court having jurisdiction over property located in California, if the court makes a specified determination. The act provides that a prize winner, by entering into an agreement to assign prize payments, as specified, is deemed to have waived any statutory period of limitation as to the State of California enforcing any rights against annual prize payments due after the last assigned payment is paid or released, if assigned as collateral,

from the lien granted the secured creditor. The act provides that these assignments of prize payments as collateral to secure loans or for future payments to another person designated pursuant to a judicial order, as described above, are not valid or allowed for the final 3 annual prize payments from the lottery to the prizewinner.

~~This bill would delete that latter provision that invalidates and prohibits~~ *instead provide that the assignment of the final 3 annual prize payments is prohibited unless the contract assigning all or any part of the final 3 annual prize payments is entered into on or after the effective date of this act.*

The California State Lottery Act of 1984 provides that none of its provisions may be changed except to further its purpose by a bill passed by a $\frac{2}{3}$ vote of each house of the Legislature and signed by the Governor.

This bill would declare that its provisions further the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 8880.325 of the Government Code is
- 2 amended to read:
- 3 8880.325. The right of any person to a prize shall not be
- 4 assignable, except that the payment of any prize may be assigned,
- 5 in whole or in part, as provided by Section 8880.326 and this
- 6 section, under any of the following circumstances:
- 7 (a) An assignment executed by the prizewinner on a form
- 8 approved by, and filed with, the commission during the
- 9 prizewinner's lifetime in accordance with regulations adopted by
- 10 the commission, to a trust that by its terms is revocable, and that
- 11 is established by the prizewinner for the benefit of the prizewinner
- 12 as a beneficiary and governed by the laws of the state.
- 13 (b) An appropriate judicial order appointing a conservator or a
- 14 guardian for the protection of the prizewinner, or for adjudicating
- 15 rights to, or ownership of, the prize.
- 16 (c) An assignment, as collateral, to a person to secure a loan
- 17 pursuant to Division 9 (commencing with Section 9101) of the

1 Commercial Code. The assignment as collateral of the right to
2 receive payment of a prize shall be subject to all of the following:

3 (1) All security agreements, rights of the prizewinner, and rights
4 of the secured creditor shall be determined pursuant to the laws of
5 the state.

6 (2) In the event of a default under the loan or security agreement,
7 the secured creditor's rights shall be limited to receiving the regular
8 payments made by the lottery, based on the prizewinner's right to
9 receive a regular prize payment until the obligation has been paid
10 in full or the prize has been paid in full, whichever occurs first.
11 Notwithstanding Division 9 (commencing with Section 9101) of
12 the Commercial Code, the secured creditor shall not have the right
13 to sell or assign the prizewinner's rights to payments to itself or
14 to any other person. This section shall not limit the secured
15 creditor's right to sell, assign, or transfer the obligation of the
16 debtor and related security interest to a third party.

17 (3) The prizewinner and secured creditor may agree, and may
18 jointly instruct the lottery, to directly deposit all prizewinning
19 payments into an account maintained by the prizewinner at a
20 federally insured financial institution located within the state. This
21 account may be subject to the secured creditor's lien. Upon receipt
22 of these instructions, the lottery shall continue to deposit all
23 payments due to the prizewinner into the account until the lottery
24 receives notification from both the secured creditor and the
25 prizewinner that the payments are to be made to an account
26 maintained at another bank, or that the secured creditor releases
27 or terminates the security interest in the prizewinner's payments.

28 (4) (A) The prizewinner, pursuant to an order of the court
29 obtained in compliance with subdivision (d), may direct the lottery
30 to make the prize payments, in whole or in part, directly to the
31 secured creditor. A direction to the lottery to make a prize payment
32 to a secured creditor shall not, in itself, constitute an assignment
33 of the prize payment to the secured creditor.

34 (B) For purposes of this paragraph and subdivision (d),
35 "assignee" and "secured creditor" are synonymous, and
36 "assignment" or "prize payment" means the payment that is
37 directed to be paid to the secured creditor.

38 (5) For purposes of perfecting the security interest of the secured
39 creditor, the right of the prizewinner to receive payments is deemed

1 to be a contract right that is perfected by the filing of a financing
2 statement with the office of the Secretary of State.

3 (6) A copy of the security agreement, an endorsed copy of the
4 financing statement, and the joint instruction to deposit the
5 prizewinner's payments directly into an account, if any, at the
6 financial institution shall be filed with the lottery. Notwithstanding
7 the security interest granted a creditor, all lottery payments shall
8 be made payable directly to the prizewinner, except as follows:

9 (A) Payments sent directly to the financial institution designated
10 pursuant to paragraph (3).

11 (B) In the event of a default under the security agreement or
12 obligation it secures, payments sent directly to the secured creditor
13 pursuant to an order of a court of competent jurisdiction
14 determining that the payments are to be made directly to the
15 secured creditor.

16 (7) Upon the termination or release of the security interest, the
17 secured creditor shall file an endorsed copy of the release or
18 termination of the security interest with the lottery.

19 (d) Except as provided in subdivision ~~(j)~~, (k), an assignment of
20 future payments to another person designated pursuant to an
21 appropriate judicial order of a California superior court or a federal
22 court having jurisdiction over property located within California,
23 if the court determines and states in its order all of the following:

24 (1) That the prizewinner was represented by independent legal
25 counsel whose name and State Bar of California number appears
26 as counsel of record on all pleadings filed in all court proceedings.
27 The prizewinner's legal counsel shall appear as counsel of record
28 at any proceedings that are required by the court.

29 (2) That the prizewinner has represented to the court, either by
30 sworn testimony if a personal appearance is required by the court,
31 or by written declaration filed with the court under penalty of
32 perjury, and that the court has determined these representations to
33 be true and correct, that the prizewinner (A) has reviewed and
34 understands the terms and effects of the assignment, (B)
35 understands that he or she will not receive the prize payments, or
36 portions thereof, for the years assigned, (C) has entered into the
37 agreement of his or her own free will without undue influence or
38 duress and not under the influence of drugs or alcohol, (D) has
39 had an opportunity to retain independent financial and tax advice,
40 and (E) has been represented by independent legal counsel, who

1 has advised the prizewinner of his or her legal rights and
2 obligations under the assignment.

3 (3) It shall be the responsibility of the prizewinner to bring to
4 the attention of the court, either by sworn testimony or by written
5 declaration submitted under penalty of perjury, the existence or
6 nonexistence of a current spouse. If married, the prizewinner shall
7 identify his or her spouse and submit to the court a signed and
8 notarized statement wherein the spouse consents to the assignment.
9 If the prizewinner is married, and the notarized statement is not
10 presented to the court, the court shall determine, to the extent
11 necessary and as appropriate under applicable law, the ability of
12 the prizewinner to make the proposed assignment without the
13 spouse's consent.

14 (4) The specific prize payment or payments assigned, or any
15 portion thereof, including the dates and amounts of the payments
16 to be assigned, the years in which each payment is to begin and
17 end, the gross amount of the annual payments assigned before
18 taxes, the prizewinner's name as it appears on the lottery claim
19 form, the full legal name of the assignor if different than the
20 prizewinner's name as it appears on the lottery claim form, the
21 assignor's social security or tax identification number, the
22 assignee's full legal name and social security or tax identification
23 number, and, if applicable, the citizenship or resident alien number
24 of the assignee if a natural person.

25 (5) Expressly identifies the amount, the date if available, any
26 nonspouse coowner, claimant, or lienholder, and the interests,
27 liens, security interests, assignments, or offsets asserted by the
28 state or other persons against any of the prize payments, including,
29 but not limited to, those payments that are the subject of the
30 proposed assignment as those interests, liens, security interests,
31 assignments, or offsets have been represented to the court by the
32 prizewinner in a written declaration signed under penalty of perjury
33 and filed with the court.

34 (6) That the lottery and the State of California are not parties
35 to the proceeding, and that the lottery and the state may rely upon
36 the order in disbursing the prize payments that are the subject of
37 the order. Further, that upon payment of prize moneys pursuant to
38 an order of the court, the lottery, the director, the commission, and
39 the employees of the lottery and the state shall be discharged of
40 all liability for the prize paid, and these persons and entities shall

1 have no duty or obligation to any person asserting another interest
2 in, or right to receive, the prize payment.

3 (7) That the prizewinner or the proposed assignee has obtained
4 and filed with the court a notification from the lottery of any liens,
5 levies, or claims, and from the Controller's office of any offsets,
6 asserted as of that time against the prizewinner, as reflected in
7 their respective official records as of the time of the notification.
8 The date of the notification shall not be more than 20 days prior
9 to the court hearing, unless extended by the court.

10 (e) The assignment of the right to receive any prize payment or
11 payments by the prizewinner pursuant to subdivision (d) shall be
12 conditioned on the following terms, conditions, and rights, which
13 may not be waived or modified by the prizewinner:

14 (1) The payment of moneys to, or on behalf of, the prizewinner
15 by the assignee, in consideration for the assignment of the prize
16 payment or payments, shall be made in full prior to the time when,
17 under the terms of the assignment, the lottery is required to make
18 the first prize payment to the assignee, or may be made in two
19 installments, the first being paid prior to the time when, under the
20 terms of the assignment, the lottery is required to make the first
21 prize payment to the assignee and the second installment within
22 11 months thereafter. The second installment shall not be in an
23 amount that exceeds the first installment. Notwithstanding this
24 paragraph, any other installment payment schedule is permitted if
25 the installment obligation relating to the installments is guaranteed
26 by a financial institution, as defined in paragraph (2) of subdivision
27 (a) of Section 4981 of the Financial Code, or a brokerage firm that
28 is a member of the Securities Investor Protection Corporation
29 (SIPC), as required by the federal Securities Investor Protection
30 Act of 1970 (15 U.S.C. Sec. 78aaa et seq.).

31 (2) If the prizewinner elects to accept the consideration to be
32 paid for the assignment in two installments as provided in
33 paragraph (1), the prizewinner shall have a special lien for the
34 balance of any payment due, effective without any further action,
35 agreement, or notice, on any of the prize payments assigned by
36 the prizewinner for the payment of moneys from the assignee. This
37 lien shall terminate upon the prizewinner receiving actual payment
38 of the moneys. The tendering of a check, payment instrument, or
39 recital of payment shall not constitute actual payment of moneys
40 for the purposes of this paragraph. Notwithstanding this paragraph,

1 if a prizewinner accepts an installment obligation guaranteed by
2 a Federal Deposit Insurance Corporation (FDIC) or SIPC insured
3 entity, then the lien created by this section shall automatically
4 terminate upon delivery of the installment obligation.

5 (3) The Legislature finds and declares that the creation of a
6 statutory lien in favor of a prizewinner is necessary to protect the
7 rights of the prizewinner from any creditors, subsequent bankruptcy
8 trustees of the assignee, or from any subsequent assignees when
9 the prizewinner has not received full payment for the assigned
10 prize payments.

11 (f) Prior to the assignment of any prize as provided in
12 subdivisions (c) and (d), the Controller shall determine whether
13 the prizewinner owes any obligation that is subject to offset under
14 Article 2 (commencing with Section 12410) of Chapter 5 of Part
15 2 of Division 3, and shall provide written notification of that
16 determination to the lottery and to the Secretary of State.

17 (g) If the lottery determines that the court order issued pursuant
18 to subdivision (d) is complete and correct in all respects, the lottery
19 shall send the prizewinner and the assignee or assignees written
20 confirmation of receipt of the court-ordered assignment and of the
21 lottery's intention to rely on that assignment in making future
22 payments to the assignee or assignees named in the court order.

23 (h) Notwithstanding any other law, by entering into an
24 agreement to assign any prize payments pursuant to subdivision
25 (c) or (d), a prizewinner shall be deemed to have waived any
26 statutory period of limitation as to the State of California enforcing
27 any rights against annual prize payments due after the last assigned
28 payment is paid or released, if assigned as collateral, from the lien
29 granted the secured creditor.

30 *(i) The assignment of prize payments pursuant to either*
31 *subdivision (c) or (d) shall not be valid or allowed for the final*
32 *three annual prize payments from the lottery to the prizewinner*
33 *unless the contract assigning all or any part of the final three*
34 *annual prize payments is entered into on or after the effective date*
35 *of the act adding this subdivision.*

36 (i)

37 (j) Any loans made to a prizewinner pursuant to this section
38 shall be exempt from the usury provisions of Article XV of the
39 California Constitution with respect to an assignment of a lottery
40 prize as collateral to secure a loan.

1 ~~(j)~~

2 ~~(k)~~ (1) Notwithstanding any other provision of this section, a
3 prizewinner shall not have the right to assign prize payments
4 pursuant to subdivision (d), or to direct the payment of a prize
5 pursuant to paragraph (4) of subdivision (c), if either of the
6 following occurs:

7 (A) The issuance by the United States Internal Revenue Service
8 (IRS) of a technical rule letter, revenue ruling, or other public
9 ruling of the IRS in which the IRS determines that, based upon
10 the right of assignment provided in subdivision (d), a California
11 lottery prizewinner who does not assign any prize payments
12 pursuant to subdivision (d) would be subject to an immediate
13 income tax liability for the value of the entire prize rather than
14 annual income tax liability for each installment when paid.

15 (B) The issuance by a court of competent jurisdiction of a
16 published decision holding that, based upon the right of assignment
17 provided in subdivision (d), a California lottery prizewinner who
18 does not assign any prize payments pursuant to subdivision (d)
19 would be subject to an immediate income tax liability for the value
20 of the entire prize rather than annual income tax liability for each
21 installment when paid.

22 (2) Upon receipt of a letter or ruling from the IRS or a published
23 decision of a court of competent jurisdiction, as specified in
24 paragraph (1), the director shall immediately file a copy of that
25 letter, ruling, or published decision with the Secretary of State.
26 Immediately upon the filing by the director of a letter, ruling, or
27 published decision with the Secretary of State, a prizewinner shall
28 be ineligible to assign a prize pursuant to subdivision (d), or to
29 direct the payment of a prize pursuant to paragraph (4) of
30 subdivision (c).

31 SEC. 2. The Legislature finds and declares that this act furthers
32 the purposes of the California State Lottery Act of 1984 enacted
33 by Proposition 37 at the November 6, 1984, general election.

34 SEC. 3. *This act is an urgency statute necessary for the*
35 *immediate preservation of the public peace, health, or safety within*
36 *the meaning of Article IV of the Constitution and shall go into*
37 *immediate effect. The facts constituting the necessity are:*

38 *To ensure the protection of California lottery prizewinners and*
39 *the lawful assignment of their prize payments, it is necessary for*
40 *this measure to take effect immediately.*

O